



GARY KRATOCHVIL

185 IBLA 54

Decided August 27, 2014



United States Department of the Interior
Office of Hearings and Appeals

Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

GARY KRATOCHVIL

IBLA 2014-22

Decided August 27, 2014

Appeal from a September 23, 2013, decision by the Oregon State Office, Bureau of Land Management, declaring three unpatented mining claims forfeited and void for failure to file mining claim maintenance fees or a valid maintenance fee waiver certification on or before September 1, 2013. ORMC 169718, *et al.*

Reversed and remanded.

1. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Mining Claims: Rental or Claim Maintenance
Fees: Small Miner Exemption

The purpose of the related party provision of 30 U.S.C. § 28f(d)(2) (2012) is to limit the applicability of the small miner waiver. Congress defined “related party,” other than a spouse or dependent children, in terms of control. Where two individuals are co-claimants for certain mining claims, but also separately hold other mining claims, and there is no evidence that the parties have any business relationship or partnership, or otherwise have or exercise any actual or legal control over each other, they are not related parties for the purposes of considering a small miner waiver.

APPEARANCES: Gary Kratochvil, San Antonio, Texas, *pro se*.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Gary Kratochvil has appealed from a September 23, 2013, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Yellow Rose #13 (ORMC 169718), Yellow Rose #30 (ORMC 169723), and Yellow Rose #31 (ORMC 169724) unpatented mining claims forfeited and void for failure to file mining claim maintenance fees or a valid maintenance fee waiver certification

(Waiver Certification) on or before September 1, 2013, for the 2014 filing year. Based on the following analysis, we reverse BLM's decision and remand the case to BLM for further action.

On August 14, 2012, Kratochvil submitted a Waiver Certification for the three Yellow Rose mining claims at issue. In its September 23, 2013, decision, BLM determined that the claims at issue were forfeited by operation of law, effective September 1, 2013, because Kratochvil was not eligible for a small miner waiver. BLM based its decision upon its finding that Kratochvil is also a claimant of record with Christopher Rose for four additional claims, the Bimbo #1 (ORMC 141125), Cattleguarder (ORMC 162448), Sparkle South (ORMC 162449), and Trampdog (ORMC 162450). Rose, who paid the maintenance fee for these 4 claims, is also a claimant of record for 33 other claims, disqualifying him from eligibility for a small miner waiver.

In his statement of reasons (SOR), Kratochvil asserts that BLM has redefined the long-standing rules for the small miner exemption, and that BLM has incorrectly applied 43 C.F.R. § 3835.1(a) in declaring his claims forfeited by operation of law. He explains that in previous years he and Rose have been co-claimants for the 4 claims that are now being used as the basis for denial of his small miner waiver. He states Rose paid the assessment fees for those 4 claims for assessment years ending on September 1, 2009, 2010, 2011, and 2012. He maintains that at no time did he personally exceed a total of 10 claims.

Under 30 U.S.C. § 28f(a) (2012), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee for each claim or site on or before September 1 of each year. *See* 43 C.F.R. § 3834.11(a)(2). The failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (2012); *see* 43 C.F.R. §§ 3830.91(a), 3835.92(a). Congress, however, provided the Secretary with discretion to waive the fee for a claimant who certified in writing that on the date the payment was due, the claimant and all related parties held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands and had performed the assessment work required under the Mining Law of 1872, for the preceding assessment year ending at noon on September 1 of the calendar year in which payment of the claim maintenance fee is due. 30 U.S.C. § 28f(d)(1) (2012); *see also* *Audrey Bradbury*, 160 IBLA 269, 273-74 (2003). BLM implemented this statute with a regulation that requires a claimant to file "BLM's waiver certification form on or before September 1 of each assessment year for which you are seeking a waiver." 43 C.F.R. § 3835.10(a).

The statute provides at 30 U.S.C. § 28f(d)(2) (2012) that a related party is “a person who controls, is controlled by, or is under common control with the claimant,” and clarifies that “the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders . . . or any other means.”

The term “[r]elated party” is defined at 43 C.F.R. § 3830.5 as “(a) The spouse and dependent children of the claimant as defined in section 152 of the Code of Internal Revenue of 1986; or (b) A person who controls, is controlled by, or is under common control with the claimant.” “Control” is defined as “actual control, legal control, or the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.” 43 C.F.R. § 3830.5. BLM states, under that definition, that it “may determine, based on evidence that we find adequate, that a stockholder who is not an officer or director, or who is not a majority shareholder, of a company or corporation exercises control as defined in these regulations.” *Id.*

In accordance with 43 C.F.R. § 3835.92(d), if a claimant, a co-claimant, or related party submits Waiver Certifications for more than 10 claims or sites and fails to pay the maintenance fee due for each claim on or before the due date, the claims and/or sites are forfeited and “you may be subject to criminal penalties under 18 U.S.C. [§] 1001.”

The purpose of the related party provision of 30 U.S.C. § 28f(d)(2) (2012) is to limit the applicability of the small miner waiver. Congress explicitly limited eligibility for such waivers to claimants and all related parties holding 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands. Congress defined “related party,” other than a spouse or dependent children, in terms of control. The regulations clearly provide flexibility to determine what constitutes control in any particular circumstance.

BLM states in its Answer that it interprets *Randi Rovetto*, 177 IBLA 257 (2009), and the Board’s Order in *Randi Rovetto (On Reconsideration)*, IBLA 2009-139-1 (Dec. 11, 2009), to mean that “all claimants on any claim held in common affect all other claimants.” We disagree with BLM’s conclusion. Rovetto acquired ownership of 15 claims held by members of her family, resulting in her holding a total of

22 claims. She realized that she no longer qualified for the small miner waiver, and accordingly paid the requisite fees.^{1/}

For our present purposes, *W. Douglas Sellers*, 160 IBLA 377 (2004), is more instructive. In that case, Sellers held 10 or fewer claims in his individual capacity while the company of which he was a director held more than 10 claims. The Board framed the issue to be decided as whether Sellers could exercise control over the company. The Board reversed BLM's decision holding that Sellers and the company were related parties and therefore that Sellers was ineligible for a small miner waiver. The Board held:

[B]eing one of five directors who would vote on matters pertaining to the company is not enough to infer that he has control over the claims held by the company. Without more evidence than this, we cannot reasonably conclude that Sellers possesses "actual control, legal control, or the power to exercise control" [of the company].

160 IBLA at 386.

In the present case, Rose's posture is similar to that of the company in *Sellers* in that he does not qualify for a small miner waiver. The 4 claims held jointly by Rose and Kratochvil do not qualify for a small miner waiver, because one of the co-claimants (Rose) holds more than 10 claims. The 3 claims held by Kratochvil do qualify, because he individually claims or co-claims fewer than 10 claims nationwide; he does not exercise control over any other person or entity who claims or co-claims more than 10 claims; and he is not controlled by any person or entity who has more than 10 claims. There is no evidence that Kratochvil and Rose exercise control over each other, or that either exercises any control over the other's individually held mining claims. Their co-ownership of 4 other claims does not demonstrate that they are in a business relationship or that they otherwise exercise control over each other or each other's claims. Simply put, there is no evidence that Rose has any control over the 3 claims listed on Kratochvil's Waiver Certification, or that Kratochvil has any control over Rose's 33 other claims.

We therefore conclude that BLM improperly determined that the mining claims at issue were forfeited by operation of law.

^{1/} The Board reversed BLM's decision on the basis that BLM mistakenly construed the payment as being for the 2009 assessment year, rather than 2008 when Rovetto paid the fees, and improperly declared the claims forfeited.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed and the case is remanded to BLM for further action.

_____/s/

James F. Roberts
Administrative Judge

I concur:

_____/s/

T. Britt Price
Administrative Judge